

IN THE
UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

THE INDIANA RAIL ROAD
COMPANY, ASSOCIATION OF
AMERICAN RAILROADS,
AMERICAN SHORT LINE AND
REGIONAL RAILROAD
ASSOCIATION,

Plaintiffs,

v.

ILLINOIS COMMERCE
COMMISSION, together with its
members, CARRIE ZALEWSKI,
BRIEN J. SHEAHAN, SADZI
MARTHA OLIVA, D. ETHAN
KIMBREL, and MARIA S.
BOCANEGRA, in their official
capacities,

Defendants,

and

THE BROTHERHOOD OF
LOCOMOTIVE ENGINEERS AND
TRAINMEN and TRANSPORTATION
DIVISION OF THE SHEET METAL,
AIR, RAIL TRANSPORTATION
WORKERS,

Intervenor-Defendants.

No. 1:19-cv-06466

The Honorable
EDMOND E. CHANG,
Judge Presiding.

AMENDED NOTICE OF APPEAL

Defendants Carrie Zalewski, Sadzi Martha Oliva, D. Ethan Kimbrel, Maria S.

Bocanegra, and Michael T. Carrigan,* in their official capacities as members of the Illinois Commerce Commission (“ICC”), by and through their attorney, Kwame Raoul, Attorney General of the State of Illinois, hereby appeal to the United States Court of Appeals for the Seventh Circuit from the portion of the order entered by this court on September 30, 2020, Doc. 96, and corresponding amended judgment entered on December 7, 2020, Doc. 110, that granted plaintiffs’ motion for summary judgment on the basis that Illinois’s minimum train crew size requirement, 625 ILCS 5/18c-7402(2)(d) (Public Act 101-0294 § 5(2)(d)), is preempted by the Federal Railroad Administration’s (“FRA’s”) withdrawal of a Notice of Proposed Rulemaking, *Train Crew Staffing*, 84 Fed. Reg. 24,735, 24,741 (May 29, 2019).

Through this notice, the ICC members amend their initial notice of appeal, Doc. 99, which was taken from this court’s original judgment, Doc. 97. That judgment stated only that declaratory judgment was entered for plaintiffs on the claim that 625 ILCS 5/18c-7402(2)(d) was preempted by the FRA’s withdrawal notice. *Id.* This court has since granted the ICC and its members’ motion to correct that judgment, Doc. 109, and entered an amended judgment awarding declaratory relief for plaintiffs on the claim that 625 ILCS 5/18c-7402(2)(d) was preempted by the FRA’s withdrawal notice, dismissing with prejudice all claims against the ICC, and dismissing with prejudice the 42 U.S.C. § 1983 claim against the ICC and its members in their official capacities, Doc. 110. The ICC members submit this

* Michael T. Carrigan is automatically substituted for Brien J. Sheahan because Carrigan has succeeded Sheahan as a commissioner. *See* Fed. R. Civ. P. 25(d).

amended notice of appeal as a protective measure to ensure that their notice of appeal is effective as to the amended judgment. Although the ICC joined the initial notice of appeal to the extent that the original judgment was adverse to it, *see* Doc. 99 at 2, it does not join this amended notice of appeal because the amended judgment dismissed with prejudice all claims against it, *see* Doc. 110.

By this appeal, the ICC members seek to have reversed and vacated the portion of this court's September 30, 2020 order, and corresponding December 7, 2020 amended judgment, that entered declaratory relief and granted plaintiffs' motion for summary judgment on the basis that 625 ILCS 5/18c-7402(2)(d) is preempted by the FRA's withdrawal notice, with the case remanded for entry of an order granting their motion for summary judgment and denying plaintiffs' motion for summary judgment, and for the court to grant any other appropriate relief.

Respectfully submitted,

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CERTIFICATE OF FILING AND SERVICE

I certify that on January 5, 2020, I electronically filed the foregoing **Amended Notice of Appeal** with the Clerk of the Court for the United States District Court for the Northern District of Illinois, Eastern Division, by using the CM/ECF system.

I further certify that the other participants in this case are CM/ECF users and will be served by the CM/ECF system.

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